CHONG KIM LOY

v.

TIMBALAN MENTERI DALAM NEGERI, MALAYSIA & ANOR.

HIGH COURT MALAYA, PENANG
EDGAR JOSEPH JR J
[CRIMINAL APPLICATION NO. 54-20-86]
6 FEBRUARY 1989

ADMINISTRATIVE LAW: *Habeas corpus - Detention order passed under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 - Whether detention justified under s. 6(3) of the Act - Unauthorised amendments to a statutory provision - Whether Inquiry Officer required to make 'independent investigation' - Forms of a detention order - Applicant's constitutional right to be informed of the reasons for his arrest - Articles 5(4), 149 of the Constitution.*

The applicant seeks a writ of *habeas corpus* to challenge the validity of a detention order passed against him under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1965 (the Act) and his detention thereunder. The applicant had been arrested on 9 July 1987 by one ASP Razali who affirmed and made a police report wherein he stated he had reason to believe, and did in fact believe, that there were grounds which would justify the applicant's detention under s. 6(1) or s. 6(3) of the Act.

The applicant's detention was prolonged. On 20 July 1987, Acting Superintendent of Police, Mustapha Kamil authorised the further detention of the applicant beyond 14 days in accordance with s. 3(2)(c) of the Act. Next, reports of arrests and detention were made by Acting Superintendent of Police, Mustapha Kamil, and sent to Senior Assistant Commissioner of Police, Suleiman bin Mohd. Hassan, as required under s. 3 of the Act. He confirmed that he did receive such a report and also affirmed that investigations were carried out by the police within the period permitted under s. 3(3) of the Act.

A detailed report was then submitted to the Inquiry Officer and the Minister of Home Affairs with the recommendation that an order of detention be made against the applicant under s. 6(1) of the Act. On 30 July 1987, the said Inquiry Officer affirmed the said report by stating that the written report submitted in respect of the applicant is proper and valid in law. On 4 September 1987, the Deputy Minister of Home Affairs relying on the reports and upon applying his mind to the contents thereof, made a detention order against the applicant in accordance with s. 6(1) of the Act.

In support of his application, the applicant submitted the following points:

1) a police officer invoking the powers of arrest under s. 3(1), had to do so with a view to detaining a person under s. 6(1) and not under s. 6(3). Therefore his detention was unlawful as ASP Razali had invoked his powers of arrest under s. 3(1) with a view to detaining the applicant "under s. 6(1) or s. 6(3) of the Act.

2) Non-compliance of s. 3(2)(c) as the Minister had not given his approval to the detention of the applicant for more than 14 days,

3) No investigations were carried out by the police within the period permitted under s. 3(3) during the applicant's detention at the Muar Station.

4) The Inquiry Officer did not carry out his own independent enquiries and therefore failed to discharge his statutory duties under s. 5(2).

5) The detention order made by the Minister under s. 6(1) is bad "on its face".

6) The applicant's constitutional right under Article 5(1) to be informed of the reasons for his arrest had been violated.

7) There had been a contravention of Article 5(4) of the Constitution as the applicant had not been produced before a Magistrate within 24 hours after his arrest and detention at the Muar police station.

Held:

[1] It is obvious that an arrest by a police officer pursuant to s. 3(1) has to be on the ground that he has reason to believe that there are grounds which could justify detention under s. 6(1) and nothing else. Section 6(3) which is concerned with the circumstances under which a Minister may make a restriction order is utterly irrelevant and so ASP Razali was quite wrong in making any reference to it in his report. However, this error does not vitiate the applicant's detention as the condition precedent for the exercise of the powers of arrest under s. 3(1) were duly satisfied.

[2] If the Court were to accede to the argument that s. 3(2)(c) had not been complied with, that would mean to place a greater onus on the detaining authority than the Act prescribes. In other words, the Court would be making an unauthorised amendment to a statutory provision and this would be plainly wrong.

[3] The Court was satisfied that investigations were carried out by the police within the period permitted under s. 3(3) during his detention and there was in fact an affidavit affirmed by the Senior Assistant Commissioner of Police, Suleiman bin Mohd. Hassan to that effect.

[4] The issue as to whether an inquiry officer is required to carry out his own independent enquiries with a view to verifying the results of police investigations, has been answered in the case of *Inspector General of Police & 2 Ors. v. Rajoo s/o Ramasamy*, [1989] 1 CLJ (Rep) 45.

[5] Nowhere in the Act is there any provision as to the form which the detention order should take. However, it is clear, that a written order properly authenticated by the Minister is essential before any lawful detention can be effected, for the Act clearly contemplates the making of a document. It is, however essential that the detention order contain at least so much of the belief of the Minister in regard to a detainee as will inform him of the reasons for his detention so as to enable him to exercise his right to make representations to an advisory board under s. 9(1). In the present case, the Court holds that the detention order notwithstanding that the omission complies with the requirements. It went further to say whether or not the Minister was satisfied as to the two requirements before making the detention order. This must depend not on a recital in the detention order to that effect, but upon a sworn statement by the Minister to that effect which in this case is provided by the affidavit of the Minister affirmed to on 29 November 1988 (encl. 7)

[6] For the purposes of the first limb of Article 5(1) of the Federal Constitution, all that an arrested person is entitled to demand for, is to be informed, at the earliest possible moment, not in detail and not necessarily in strict legal terminology, but only in general terms, by virtue of what power he is being arrested and of the grounds of his arrest. Here, the arresting officer did comply with the first limb. As to the second limb, is that be informed at the same time of the grounds of his arrest. The Court agreed that the arresting officer should have gone further and added that the activities involving drugs were drug trafficking activities. However, the omission, unfortunate though it was, did not invalidate the arrest or the subsequent detention.

[7] It is accepted that legislation under Article 149 against acts and crimes prejudicial to public order is not *ipso facto* inconsistent with the right conferred by Article 5(4) upon an arrested person to be produced, without unreasonable delay and in any case, within 24 hours before a Magistrate and he shall not be further detained in custody without the Magistrate's authority, but any such restriction must be clear in the legislation. However, the powers of preventive detention spelt out in Part II of the Act, in particular s. 3(2) do make such restriction manifestly clear and is therefore valid notwithstanding that it is inconsistent with Article 5(4) of the Federal Constitution.

[Application dismissed.]

Cases referred to:
R v. Brinton Prison (Governor) Ex Parte Pitt-Rivers [1942] 1 All ER 207
Yit Hon Kit v. Minister of Home Affairs, Malaysia & Anor. [1988] 2 MLJ Supp 638
Christie v. Leachinsky [1947] AC 573
PP v. Lau Kee Hoo [1983] CLJ (Rep) 336
Lau Kee Hoo v. PP [1984] 1 MLJ 110
Lee Mau Seng v. Minister of Home Affairs [1971] 2 MLJ 137
Inspector General of Police & Ors v. Rajoo s/o Ramasamy [1989] 1 CLJ (Rep) 45

Legislation referred to:
Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3(1), (2)(a), (b), (c), (2), (3), 6(1), 6(3)
Defence (General) Regulations 1939 [UK], reg. 18B
Internal Security Act 1960, s. 5

For the applicant - Gooi Hock Seng (Athimulan with him); M/s. Shan & Gooi
For the respondents - Mohd. Raus bin Sharif

JUDGMENT

Edgar Joseph Jr J:

In this case the applicant Chong Kim Loy seeks a writ of *habeas corpus ad subjiciendum* whereby he challenges both the validity of a detention order dated 4 September 1987 passed against him by the Deputy Minister of Home Affairs under and by virtue of the provisions of s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ("the Act") and his detention thereunder.

The impugned order ("the detention order") was in the following terms:

> I, the Minister of Home Affairs, being satisfied that it is necessary to make this order against the person whose name is mentioned below with a view to preventing him from carrying out any activities relating to or involving the trafficking of dangerous drugs.
>
> | Name | NRIC |
> |---|---|
> | Chong Kim Loy | 8109397 |
>
> Accordingly, in exercise of the powers conferred upon me under s. 6(1) of the Dangerous Drugs Act (Special Preventive Measures) 1985, I hereby direct, by this order, that the above mentioned person be detained for a period of 2 years commencing from 6 September 1987, at the Rehabilitation Centre, Muar, Johore, or at any other place directed by me from time to time.
>
> Signed on 4 September 1987.
>
> Sgd. (Dato' Megat Junid bin Megat Ayob)
> Deputy Minister of Home Affairs,
> Malaysia

The ground upon which the detention order was made was as follows:

> That you have been involved in activities relating to trafficking of dangerous drugs.

The allegations of fact upon which the detention order was based ("the allegations of facts") were as follows:

> That you are a trafficker in morphine, heroin base and heroin no. 4 and carrying out such activities in Penang and at the international level since 1982.
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> 2. Between the middle of 1982 until early 1983, you had been a keeper of the drug morphine belonging to Ah Bee when you got a fee of RM100 for each consignment of morphine. During that period, you received a supply of 60 to 80 consignments in morphine.
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> 3. At the end of 1983, you sold 10 packets of heroin no. 4 (1 packet - 1½ pounds) to Ah Yam at the price of RM10,000. You received the supply of the said drug from Cheng Hai at the price of RM9,500 per packet.
>
> 4. Since the middle of the year 1983 until the early part of the year 1984, you had received 108 pounds heroin base from Cheng Hai at the price of RM3,800 per pound in 6 consignments and you had thus been trafficking in the said drug at a price of RM4,200 to RM4,500 per pound.
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> 5. Commencing February 1984 until May 1984, you had received a total of 160 pounds heroin base from Cheng Hai in 4 consignments and you had sold the same at the price of between RM4,000 to RM4,500 per pound.

In this judgment, all references to section shall, unless otherwise stated, be to the Act.

The history of the matter which calls for the consideration of the Court may be stated briefly. According to the affidavit evidence, it appears that the applicant had been arrested at about 9.55 a.m. on 9 July 1987, in front of Pusat Pemulihan Akhlak, Muar, by ASP Razali bin Mustapha who affirmed that he had reason to believe, and did in fact believe, that there were grounds which would justify the detention of the applicant under s. 6(1) of the Act as the applicant had been and is associated with activities relating to or involving the trafficking of dangerous drugs. Accordingly, ASP Razali made a police report on the same day at about 10.05 a.m. wherein he stated much the same thing as he had subsequently affirmed except that he had stated therein that there were grounds which would justify the detention of the applicant under "s. 6(1) or s. 6(3)" of the Act. The significance of this will become apparent later.

Assistant Superintendent of Police Razali further affirmed that immediately upon arresting the applicant, he informed the applicant orally, of the grounds of his arrest in the following words:

> You have been arrested under s. 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985, because you have been involved in activities involving drugs and it is necessary to detain you in the public interest.

On 10 July 1987 Inspector Ahmad Zabidin bin Mohd. Hassan, at the material time, a Senior Police Officer attached to the District Police Headquarters, Muar, authorised the further detention of the applicant beyond 24 hours in accordance with the requirements of s. 3(2)(a) of the Act.

The next day, that is to say, on 11 July 1987 at about 8.30 a.m., Assistant Superintendent of Police Razali bin Mustapha authorised the further detention of the applicant for an additional period beyond 48 hours in accordance with the requirements of s. 3(2)(b) of the Act.

On 16 July 1987, Acting Superintendent of Police Mustapha Kamil bin Yaacub, at the material time attached to the Muar Police District Headquarters as Officer-in-Charge of the Muar District, reported the circumstances of the arrest and detention of the applicant to Acting Senior Assistant Commissioner Suleiman bin Mohd Hassan. On 20 July 1987, Acting Superintendent of Police Mustapha Kamil authorised the further detention of the applicant beyond 14 days in accordance with the requirements of s. 3(2)(c) of the Act.

Next, Senior Assistant Commissioner of Police Suleiman bin Mohd. Hassan, then Deputy Director Anti-Narcotics Division, Police Headquarters, Bukit Aman, Kuala Lumpur, and designated by the Inspector General of Police to receive reports of arrests and detention and to report the circumstances of such arrests and detention to the Minister, under s. 3 of the Act, confirmed that he did on 16 July 1987 receive such report in respect of the applicant from Deputy Superintendent of Police Mustapha Kamil bin Yaakub.

Senior Assistant Commissioner Suleiman also affirmed that investigations were carried out by the police within the period permitted under s. 3(3) of the Act and that upon completion thereof the police submitted a detailed report of the investigations relating to the conduct and activities of the applicant to the inquiry officer and to the Ministry of Home Affairs with a recommendation that an order of detention be made against the applicant under s. 6(1).

On 30 July 1987, Encik Abdul Kadir bin Musa, then an Inquiry Officer appointed under s. 5(1) of the Act, received from the police a copy of the complete report of investigations against the applicant in accordance with s. 3(3). He affirmed, and I quote him:

> After careful consideration of the report of investigations submitted by the police and detailed analysis of all the relevant facts contained therein pertaining to matters associated with activities relating to or involving the trafficking in dangerous drugs pursuant to s. 5(2) of the Act, I was satisfied that there were reasonable grounds for believing that the applicant has been associated with activities relating to or involving the trafficking in dangerous drugs. I then prepared a written report wherein I stated that based on the complete report of investigations carried out by the police in respect of the applicant, I was satisfied that the applicant has been involved in activities relating to or involving the trafficking in dangerous drugs. I then submitted the written report required by law relating to the applicant to the Minister of Home Affairs pursuant to s. 5(4) of the Act on 1 September 1987 for his consideration as to whether an order under s. 6 should be made against the applicant.
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> 5. I verily state that I did prepare a written report for the consideration of the Minister of Home Affairs in respect of Chong Kim Loy, wherein I stated I was satisfied that the applicant has been involved in activities relating to or involving the trafficking in dangerous drugs. I verily believe that the written report submitted in respect of the applicant is proper and valid in law.

On 4 September 1987, the Deputy Minister of Home Affairs Dato Megat Junid bin Megat Ayob, relying upon the reports he had received from the police and the Inquiry Officer pursuant to the Act, and upon applying his mind to the contents thereof, was satisfied that the applicant had associated himself in activities relating to or involving the trafficking of dangerous drugs and that it was necessary in the interest of public order that the applicant be detained, made a detention order against him directing that he be detained for period of two years with effect from 6 September 1987 in accordance with the provisions of s. 6(1) of the Act.

On 5 September 1987, Assistant Superintendent of Police Razali bin Mustapha served the applicant with the original detention order, the statement of the grounds and the allegations of fact based upon which the detention order was made. Assistant Superintendent of Police Razali also explained to the applicant, at the time of service, the contents of these documents and also informed him that he had a right to make representations against the detention order to an advisory board pursuant to s. 9 of the act.

On the next day, the applicant was duly escorted to the Pusat Pemulihan Akhlak, Muar, Johore, where he was admitted in accordance with the detention order.

Before me, Counsel for the applicant has taken a number of points.

In the first place it was contended that although a police officer could, in certain circumstances, invoke the powers of arrest under s. 3(1) this had to be with a view to detaining a person under s. 6(1) and not under s. 6(3).

As in this case the Arresting Officer Assistant Superintendent of Police Razali bin Mustapha had in his police report dated 9 July 1987 (Ex. RM1 to encl. 12) categorically stated that he had invoked his powers of arrest under s. 3(1) with a view to detaining the applicant "under s. 6(1) or s. 6(3)" it was said that his detention was unlawful.

For convenience, I shall reproduce ss. 3(1), 6(1) and 6(3) so far as material to the issues before me; they are as follows:

> 3. (1) Any police officer may, without warrant, arrest and detain, for the purpose of investigation, any person in respect of whom he has reason to believe there are grounds which could justify his detention under subsection (1) of s. 6.
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> 6. (1) Whenever the Minister, after considering:
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> (a) the complete report of investigation submitted under subsection (3) of s. 3; and
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> (b) the report of the Inquiry Officer submitted under subsection (4) of s. 5, is satisfied with respect to any person that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest if public order that such person be detained, by order (hereinafter referred to as a "detention order") direct that such person be detained for a period not exceeding two years from the date of such order.
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> 6. (3) If the Minister is satisfied that for the purpose mentioned in subsection (1) it is necessary that control and supervision should be exercised over any person or that restrictions and conditions should be imposed upon that person in respect of his activities, freedom of movement or places of residence or employment, but for that purpose it is unnecessary to detain him, he may make an order (hereinafter referred to as a "restriction person") all or any of the following restrictions and conditions: ... (Then follows a list of restrictions and conditions which conditions do not concern this Court).

It is obvious that an arrest by a police officer pursuant to the provisions of s. 3(1) has to on the ground that he has reason to believe that there are grounds which could justify detention under s. 6(1) and nothing else. Section 6(3) which is concerned with the circumstances under which a Minister may make a restriction order is utterly irrelevant and so ASP Razali was quite wrong in making any reference to it in his report.

But, the question is, does this error vitiate the applicant's detention? With respect, I think not.

ASP Razali had by his affidavit affirmed to on 29 March 1989 (encl. 12) stated categorically that, and I quote him:

From information received and enquiries conducted relating to the activities of Chong Kim Loy (hereinafter referred to as "the applicant"), I have reason to believe, and did in fact believe, that there are grounds which would justify the detention of the applicant under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (hereinafter referred to as "the Act") and that he has been and is associated with activities relating to or involving the trafficking of dangerous drugs. By reason thereof, on 9 July 1987 in front of Pusat Pemulihan Akhlak, Muar, Johore at 9.55 a.m., I arrested and detained the applicant for the purpose of investigations under s. 3(1) of the Act.

The conditions precedent for the exercise of the powers of arrest under s. 3(1) were thus duly satisfied and so I do not consider that the irrelevant reference to s. 6(3) was of any consequence.

This ground accordingly fails.

The second point taken on behalf of the applicant was this: it was said that the maximum period of detention pending enquiries under s. 3(2) was 60 days but that this was subject to compliance with the provisions of provisos (a), (b) and (c) to that section in particular, it as argued that proviso (c) had not been complied with in that the Minister had not given "the green light", meaning his approval, to the detention of the applicant for more than 14 days. In the alternative, it was argued that if there was no requirement that the Minister had to give his approval within this period of 14 days he had to do so as soon as reasonably possible thereafter. As there was no evidence showing compliance with these requirements, it was said that the applicant's continued detention was unlawful.

For convenience, I shall reproduce s. 3(2) and the provisos thereto:

3. (2) Any person arrested and detained under this section may be detained in police custody for a period not exceeding sixty days without an order of detention having been made in respect of him under subsection (1) of s. 6:

Provided that:

(a) he shall not be detained for more than twenty four hours except with the authority of a police officer of or above the rank of Inspector;

(b) he shall not be detained for more than forty eight hours except with the authority of a police officer of or above the rank of Assistant Superintendent of Police;

(c) he shall not be detained for more than fourteen days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector-General or to a police officer designated by the Inspector-General in that behalf and the Inspector-General or police officer so designated by him, as the case may be, shall forthwith report the same to the Minister.

It seems to me that were I do accede to this branch of Counsel's submission I would be placing a greater onus on the detaining authority than the Act prescribes. In other words, I would be making an unauthorised amendment to a statutory provision and this, of course, would be plainly wrong. Accordingly, this ground also fails.

The third point taken on behalf of the applicant was this; it was said that although the applicant's wife, had by para. 7 of her affidavit affirmed to on 11 October 1988, (encl. 2) filed in support of the motion herein, stated that "no investigations whatsoever had been carried out by the police or anyone during the applicant's detention at the Muar police station", the police officer making the investigation for purposes of submitting a complete report to the Inquiry Officer and the Minister under the provisions of s. 3(3) had not gone on affidavit to deny the allegation with the result that the applicant's continued detention was unlawful.

For convenience, I shall reproduce s. 3(3); it reads as follows:

> The police officer making an investigation pertaining to a person arrested and detained under this section shall cause a copy of the complete report of the investigation to be submitted:
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> (a) to an Inquiry Officer appointed under subsection (1) of s. 5; and
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> (b) to the Minister,
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> within such period as may be prescribed by the Minister by regulations made under this act.

A scrutiny of the record provided shows that Senior Assistant Commissioner of Police Sulaiman bin Mohd. Hassan, the Chief Police Officer, Johore and, at the material time, the Deputy Director Anti-Naracotrics Division, Police Headquarters, Bukit Aman, Kuala Lumpur, and the officer designated by the Inspector General of Police to receive reports of arrest and detention under s. 3 of the Act and to report the circumstances of the same to the Minister, had by para. 3 of his affidavit affirmed to on 9 November 1988 (encl. 10) categorically stated that, and I quote him:

> Investigations were carried out by the police within the period permitted under s. 3(3) of the Act and upon completion, on 30 July 1987, the police submitted a detailed report of the investigations relating to the conduct and activities of the applicant to the inquiry officer and to the Ministry of Home Affairs.

In my view this puts paid to this particular ground advanced on behalf of the applicant.

The fourth point taken on behalf of the applicant was that the affidavit of the Inquiry Officer affirmed to on 9 November 1988 (encl. 8) reveals that he did not carry out his own independent enquiries with a view to verifying the results of police investigations but instead had relied on the full face value of the complete report of investigations made under s. 3(3). Accordingly, it was argued that the Inquiry Officer had failed to discharge his statutory duties under s. 5(2).

For convenience, I shall reproduce ss. 5(2), (3) and (4); they read as follows:

> 5(2) Upon receiving the report under subsection 3, the Inquiry Officer shall inquire whether there are reasonable grounds for believing that such person has been or is associated with activity relating to or involving the trafficking in dangerous drugs.
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> (3) An Inquiry Officer may, in his discretion, for the purpose of subsection (2):
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> (a) require the attendance before him of a person detained under s. 3,
>
> (b) procure and receive all such evidence, whether oral or in writing and whether the same be admissible or not under any written law for the time being in force relating to evidence or criminal procedure, which he may think necessary or desirable;
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> (c) summon and examine witnesses on oath or affirmation, and may for those purposes administer any oath or affirmation;
>
> (d) require the production of any document or other thing in his opinion relevant to the case.
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> (4) An Inquiry Officer shall submit his report in writing to the Minister within such period as may be prescribed by the Minister by regulations made under this act.

The issue which arises for decision regarding this part of the case has been answered for me against the detainee in the very recent decision of the Supreme Court in the case of *Inspector General of Police & Ors. v. Rajoo s/o Ramasamy* [1989] 1 CLJ (Rep) 45 and nothing more need be said about the point.

The fifth point taken on behalf of the applicant was this: it was submitted that the detention order made by the Minister under s. 6(1) against him is bad on its face. In particular, it was argued that under s. 6(1) the Minister might make a detention order against any person the subject of the report of an Inquiry Officer under s. 5(4) provided that he is satisfied as to two matters, namely, (a) that the person concerned has been or is associated with any activity relating to or involving the trafficking in dangerous drugs and (b) that it is necessary in the interest of public order that such person be detained for a period not exceeding two years. But it was said that the detention order made against the applicant made no reference as to (b) and it was accordingly contended that by reason of this omission, the same was bad on the face of it.

Now, nowhere in the Act is there any provision as to the form which the detention order should take. However, it is clear, that a written order properly authenticated by the Minister is essential before any lawful detention can be effected for the Act clearly contemplates the making of a document. It is, however, I think essential that the detention order contain at least so much of the belief of the Minister in regard to a detainee as will inform him, in general terms, of the reasons for his detention so as to enable him to exercise, as soon as reasonably possible, his right to make representation to an advisory board under s. 9(1).

In the present case, I consider that the detention order notwithstanding the omission aforesaid complies with these requirements and I therefore fail to see how it could be said that it is thereby invalidated.

I am fortified in the view I take by the consideration that whether or not the Minister was satisfied as to the two requirements aforesaid before making the detention order to that effect but upon a sworn statement by the Minister to that effect which in this case is provided by the affidavit of the Minister affirmed to on 29 November 1988 (encl. 7) and, in particular, para. 4 thereof which reads:

> From the reports and information relating to the conduct and activities of the applicant I received from the police and the report of the Inquiry Officer pursuant to s. 5(4) of the Act, I was satisfied that himself in activities relating to or involving in the trafficking of dangerous drugs and that it was necessary in the interest of public order that the applicant be detained. Accordingly, I made an order directing that he be detained for a period of two years with effect from 6 September 1987. A copy of the said detention order dated 4 September 1987 is annexed herewith and marked as "MJMA 1".

As was aptly put by Viscount Caldecotte LCJ in *R v. Brixton Prison (Governor) Ex parte Pitt-Rivers* [1942] 1 All ER 207 where in a case under reg. 18B of the Defence (General) Regulations 1939, a similar point was taken, at p. 210B:

> In my judgment, the absence of the recital does not warrant the inference that the order was made without the Secretary of State having reasonable cause to believe that it was necessary to exercise control over the applicant, whether or not the Secretary of State had such reasonable cause did not, and could not, depend on a recital to that effect. What was vital was that the Secretary of State should have had reasonable cause, and the Court, in opinion, can properly find such cause to exist from the sworn statement of Sir John Anderson, which I have read. It makes no difference that this statement was made more than a year from the date of the order. The important point is the fact stated.

Accordingly, this ground also fails.

The sixth point taken on behalf of the applicant was this: it was contended that the affidavit of the arresting officer Assistant Superintendent of Police Razali bin Mustapha affirmed to on 29 March 1989 (encl. 12) in particular, para. 3 thereof, revealed that there had been a violation of the applicant's constitutional right to be informed, as soon as may be, of the reasons for his arrest, as enshrined in Article 5(1) of the Constitution.

Paragraph 3 of Assistant Superintendent of Police Razali's affidavit reads as follows:

> Immediately upon effecting arrest of the applicant, I informed the applicant orally of the grounds of his arrest in the following words.
>
> You have been arrested under s. 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985, because you have been involved in **activities involving drugs** and it is necessary to detain you in the public interest.
> (Emphasis supplied)

It was pointed out that on Assistant Superintendent of Police Razali's own affidavit the applicant was never informed at the time of his arrest that there was reason to believe that there were grounds to justify his detention under s. 6(1) because he had been or is associated with activities relating to or involving the **trafficking in dangerous drugs**. In other words, it was not sufficient for Assistant Superintendent of Police Razali to inform the applicant that the latter had been involved in activities involving drugs; it was essential to go further and add the words "trafficking in drugs". In support, Counsel cited a judgment of this Court, in *Yit Hon Kit v. Minister of Home Affairs, Malaysia & Anor.* [1988] 2 MLJ Supp 638 wherein appears the following passage:

> The House of Lords attached so much weight to the rule that an arrested person must be informed, at the time of his arrest, of the ground for his arrest that though there existed at the time of Leachisky's arrest a valid ground for arrest, they held the arrest and subsequent detention unlawful merely because he was told that he was arrested on account of some other ground which did not justify the arrest.
>
> Accordingly, it is of the first importance for a person arrested under s. 3(1) to know, at the earliest possible moment, by virtue of what power he is being arrested. If he is denied this information, he will not know what his rights and remedies are to challenge his arrest; he would in effect be blind-folded. He must also be informed, at the same time, of the grounds of his arrest.

In my opinion, for purposes of the first limb of Article 5(1), all that an arrested person is entitled to demand for, is to be informed, at the earliest possible moment, not in detail and not necessarily in strict legal terminology, but only in general terms, by virtue of what power he is being arrested and of the grounds of his arrest. But, enough must be made known to him to afford him "the opportunity of giving an explanation of any misunderstanding or of calling attention to other person for whom he may have been mistaken with the result that further enquiries may save him from the consequences of a false accusation". (Per Viscound Simon LC in *Christie v. Leachinsky*) [1947] AC 573, 592. Nothing less will suffice.

Applying this test to the circumstances of the present case, the arresting officer did, when effecting the arrest, inform the applicant that he was being arrested under the provisions of s. 3 of the act. So, clearly there was compliance with the requirement that he be informed at the earliest possible moment by virtue of what power he was being arrested and, indeed, no complaint has been made on this score. The only objection taken has been with regard to the second requirement; that he be informed at the same time of the grounds of his arrest.

I agree that the applicant should have been informed not merely that he was being arrested because he had been involved in activities involving drugs and that it was necessary that he be detained in the public interest. The arresting officer should have gone further and added that the activities involving drugs were drug trafficking activities. In my view, the omission unfortunate though it was, did not invalidate the arrest or the subsequent detention. The applicant must have known, that the activities alleged against him were drug trafficking activities and indeed he has not gone on affidavit to say otherwise. Certainly, no prejudice, as a result of the omission was either proved or even alleged by the applicant or by his Counsel during the argument.

Accordingly, this ground also fails.

The final point taken on behalf of the applicant was this: it was said that there had been a contravention of Article 5(4) of the Constitution by reason of the fact that the applicant had not been produced before a Magistrate within 24 hours after his arrest and detention at the Muar police station. It was emphasised that as the provisions of the proviso to Article 5(4) were inapplicable, the applicant's detention was unlawful.

Article 5(4) reads as follows:

> Where a person is arrested and not released he shall without unreasonable delay, and in any case within twenty-four hours (excluding the time of any necessary journey) be produced before a Magistrate and shall not be further detained in custody without the Magistrate's authority:
>
> Provided that this clause shall not apply to the arrest or detention of any person under the existing laws relating to restricted residence, and all the provisions of this clause shall be deemed to have been an integral part of this Article as from Merdeka Day.

On the other hand, the Senior Federal Counsel, on behalf of the respondents, responded that in cases where an arrest is effected under s. 3(1) of the Act, there was no requirement for production before a Magistrate within 24 hours after arrest because Article 149 overrides Article 5(4).

Article 149 reads as follows:

> (1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation:
>
> (a) to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property; or
>
> (b) to excite disaffection against the Yang di-Pertuan Agong or any Government in the federation; or
>
> (c) to promote feeling of ill-will and hostility between different faces or other classes of the population likely to cause violence; or
>
> (d) to procure the alteration, otherwise than by lawful means, of anything by law established;
>
> (e) which is prejudicial to the security of the Federation or any part thereof,
>
> any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of Articles 5, 9, 10 or 13 would apart from this Article be outside the legislative power of Parliament; and Article 79 shall not apply to a Bill for such an Act or any amendment to such a Bill.

(2) A law containing such a recital as is mentioned in Clause (1) shall, if not sooner repealed, cease to have effect of resolutions are passed by both Houses of Parliament annulling such law, but without prejudice to anything previously done by virtue thereof or to the power of Parliament to make a new law under this Article.

In reply, Counsel for the applicant argued that although the Act was enacted by virtue of Article 149, there was nothing in the Act, taking away the fundamental right conferred by Article 5(4).

Now, the Act was passed under Article 149 and its validity is plain beyond argument. (See by analogy the Federal Court cases of *PP v. Lau Kee Hoo* [1983] CLJ (Rep) 336 and *Lau Kee Hoo v. PP* [1984] 1 MLJ 110 where the validity of the Internal Security Act 1960 (No. 82 of 1972) was judicially considered to be plain).

Next, I accept that legislation under Article 149 against acts and crimes prejudicial to public order is not *ipso* inconsistent with the right conferred by Article 5(4) upon an arrested person to be produced, without unreasonable delay and, in any case, within twenty four hours, before a Magistrate and he shall not be further detained in custody without the Magistrate's authority, but any such restriction must be clear in the legislation. (See *Lee Mau Seng v. Minister of Home Affairs*) [1971] 2 MLJ 137.

However, the powers of preventive detention spelt out in Part II of the Act, in particular, s. 3(2) appearing therein, do, in my opinion, make such restriction manifestly clear and is therefore valid notwithstanding that it is inconsistent with Article 5(4).

Accordingly, this last point advanced on behalf of the applicant also fails.

In all the circumstances, *habeas corpus* is refused and the application must be and is dismissed.

Also found at [1990] 1 CLJ 61